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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT CALIFORNIA

OAKLAND DIVISION

JOHN DURANT d/b/a JOHN DURANT PHOTOGRAPHER,

Plaintiff,

v.

ENGINIOUS STRUCTURES, INC. a California corporation,

Defendant.

Case No.: 4:16-cv-5161

COMPLAINT FOR COPYRIGHT INFRINGEMENT AND VIOLATION OF THE DMCA, 17 U.S.C. § 1202

DEMAND FOR JURY TRIAL

Plaintiff John Durant ("Plaintiff" or "Mr. Durant"), by his undersigned attorneys, Duane Morris LLP, for his Complaint, alleges as follows:

SUBSTANCE OF THE ACTION

1. This is a case of willful copyright infringement in violation of 17 U.S.C. §§ 106(1), 501, and violation of the Digital Millennium Copyright Act in violation of 17 U.S.C. § 1202. Plaintiff seeks compensatory and statutory damages in an amount to be established at trial.

PARTIES

2. Plaintiff John Durant is an individual doing business under the name John Durant Photographer at 3421 Tripp Ct., Studio 4, San Diego, California 92121.

3. Upon information and belief, defendant Enginious Structures, Inc. ("Defendant") is a corporation organized under the laws of California, with an office located at 1904 Franklin Street, Penthouse Suite, Oakland, CA 94612.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore this Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

5. Personal jurisdiction over Defendant is proper. Defendant is a California corporation that does business in California and maintains an office at 1904 Franklin Street, Penthouse Suite, Oakland, CA 94612. Further, Defendant has caused Plaintiff harm in this state and judicial district, including without limitation the harm caused to Plaintiff's exclusive copyrights in this jurisdiction that has been undertaken and used, in part, to promote the business that Defendant conducts in this forum.

6. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because Defendant does business in this district and maintains an office at 1904 Franklin Street, Penthouse Suite, Oakland, CA 94612.

INTRADISTRICT ASSIGNMENT

7. Pursuant to Civil L.R. 3-2(c), assignment in this division is proper because this action arises in the City of Oakland, County of Alameda.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff's Business

8. Plaintiff is a professional photographer in California, who, through his business, creates and licenses photographic images for various uses.

9. As a result of his talents, Mr. Durant became a highly-acclaimed architectural photographer, specializing in interior, exterior and aerial photography. Plaintiff's notable style and artistry make his photographs very popular and valuable.

10. Plaintiff created and holds exclusive copyright ownership of a striking and professional photograph of the Brandes residence, Rancho Santa Fe, CA, which was created in August 2006 for presentation to Architectural Digest Magazine (the "Copyrighted Work"). A true and accurate copy of the Copyrighted Work is attached hereto as Exhibit A.

11. The Copyrighted Work is an original work of authorship created by and belonging to Mr. Durant.

12. On October 2, 2006, Plaintiff obtained a registration with the United States Copyright Office for a collection of photographic images titled, "Third Quarter 2006," which included the Copyrighted Work. Attached hereto as Exhibit B is a copy of the certificate for Registration Number VA 1-390-149 obtained from the United States Copyright Office, which covers (among other images) the Copyrighted Work.

13. When Plaintiff displayed the Copyrighted Work on his website and provided a digital copy of the Copyrighted Work to a licensee, he included identifying information about himself as the photographer, including his contact information as well as others details about the picture, in an electronic file accompanying the digital image referred to by the Plaintiff as metadata and also known as an exchangeable image file format, or so-called EXIF file ("metadata / EXIF").

14. The metadata / EXIF accompanying the digital version of the Copyrighted Work displayed and distributed by the Plaintiff constitutes copyright management information for purposes of the Digital Millennium Copyright Act.

B. Defendant's Unlawful Activities

15. Plaintiff recently discovered that Defendant has been infringing upon Plaintiff's exclusive copyright in the Copyrighted Work.

16. For example, Defendant has been reproducing, distributing, and publicly displaying the Copyrighted Work, without Plaintiff's authorization or permission, in furtherance of efforts to market and sell products and/or services, at the following website addresses owned and operated by the Defendant (the "Infringing Works"):

- http://www.enginious-structures.com/Skylights,%20Storefronts,%20and%20Curtainwalls/
- http://www.enginious-structures.com/Skylights,%20Storefronts,%20and%20Curtainwalls/The%20Estate%20Suncatch/slides/The%20Estate%20Suncatch%207.jpg

17. Screenshots demonstrating Defendant's unauthorized Infringing Works are attached hereto as Exhibit C.

18. A search of the Defendant's Infringing Works on its website revealed none of the metadata / EXIF information that had accompanied the digital copy of the Copyrighted Work as displayed and distributed by the Plaintiff.

FIRST CLAIM FOR RELIEF
DIRECT COPYRIGHT INFRINGEMENT
(17 U.S.C. § 101 *et seq.*)

19. Plaintiff realleges the preceding paragraphs 1 through 18 and incorporates them by reference as if fully set forth herein.

20. The Copyrighted Work is an original work of authorship, embodying copyrightable subject matter, subject to the full protection of the United States copyright laws.

21. Plaintiff is sole and exclusive owner of the copyrights, including the right to sue for infringement of the copyright in the Copyrighted Work.

22. Upon information and belief, as a result of Plaintiff's reproduction, distribution and public display of the Copyrighted Work, Defendant had access to the Copyrighted Work prior to the creation of Defendant's Infringing Works.

23. By reproducing, distributing and publicly displaying the Infringing Works, as described above, Defendant violated and infringed upon Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501.

24. Upon information and belief, Defendant's infringement of Plaintiff's copyright in the Copyrighted Work is willful and deliberate, and Defendant has profited at the expense of Plaintiff.

25. As a direct and proximate result of Defendant's infringement of Plaintiff's copyright and exclusive rights in the Copyrighted Work, Plaintiff is entitled to recover his actual damages from Defendant's illegal and improper uses of the Copyright Work, in an amount to be proven at trial. In addition, Plaintiff is entitled to recover damages based on the disgorgement of Defendant's profits resulting from its infringement of the Copyrighted Work, in an amount to be proven at trial.

26. In the alternative, and at Plaintiff's election, Plaintiff is entitled to statutory damages, pursuant to 17 U.S.C. § 504(c), up to the maximum amount of $150,000 with respect to the infringing reproduction, distribution, and public display for the Copyrighted Work, or such other amounts as may be proper under 17 U.S.C. § 504(c).

27. Plaintiff is also entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

28. Defendant's infringing conduct has caused irreparable injury, and will continue to cause irreparable injury unless permanently enjoined by this Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT
(17 U.S.C. § 1202)

29. Plaintiff realleges the allegations of the preceding paragraphs 1 through 28 and incorporates them by reference as if fully set forth herein.

30. Defendant has, on information and belief, intentionally removed the metadata / EXIF copyright management information included with Plaintiff's Copyrighted Work as displayed and distributed by the Plaintiff.

31. Upon information and belief, Defendant removed and/or altered Plaintiff's copyright management information knowing or having reasonable grounds to know that such actions would conceal its infringement of Plaintiff's copyright, because it would make it more difficult for Plaintiff to search for his image on the internet to locate infringing uses of the Copyrighted Work and find the Infringing Works.

32. Upon information and belief, Defendant's acts in violation of the Digital Millennium Copyright Act were and are willful.

33. By reason of Defendant's violations of the Digital Millennium Copyright Act, Plaintiff has sustained and will continue to sustain substantial injuries.

34. Further irreparable harm is imminent as a result of Defendant's conduct, and Plaintiff is without an adequate remedy at law. Plaintiff is therefore entitled to an injunction, in accordance with 17 U.S.C. § 1203(b), restraining Defendant, its officers, directors, agents, employees, representatives, assigns, and all persons acting in concert with Defendant from engaging in further violations of the Digital Millennium Copyright Act.

35. In lieu of Defendant's profits derived from its violations of the Digital Millennium Copyright Act or Plaintiff's actual damages, Plaintiff may elect to and is entitled to recover statutory damages in accordance with 17 U.S.C. § 1203(c)(3)(B).

36. Plaintiff is entitled to recover costs and attorneys' fees in accordance with 17 U.S.C. § 1203(b)(4) and (5).

WHEREFORE, Plaintiff demands judgment as follows:

1. A declaration that Defendant has infringed Plaintiff's exclusive copyrights under the Copyright Act in the Copyrighted Work;

2. A declaration that such infringement is willful;

3. An award of such of actual damages caused by, and disgorgement of Defendant's profits in connection with, Defendant's copyright infringement under 17 U.S.C. § 504(b) in amounts

to be determined at trial, or, at Plaintiff's election, an award of statutory damages under 17 U.S.C. §§ 504(c) in an amount to be determined by the Court up to a maximum of $150,000 based on Defendant's willful infringement of the Copyrighted Work;

4. A declaration that Defendant has violated the Digital Millennium Copyright Act by intentionally removing Plaintiff's copyright management information from the Copyrighted Work in when copying, distributing and publicly displaying its Infringing Works, in order to conceal its infringement;

5. Awarding Plaintiff all gains, profits, property, and advantages obtained or derived by Defendant from its acts of copyright infringement and violations of the Digital Millennium Copyright Act or, in lieu thereof and at Plaintiff's election, such statutory damages as the Court shall deem proper under 17 U.S.C. § 1203(c)(3)(B), including damages up to $25,000 for each violation of the Digital Millennium Copyright Act;

6. Awarding Plaintiff its costs and disbursements incurred in this action, including its reasonable attorneys' fees, pursuant to 17 U.S.C. §§ 505 and 1203(b)(5);

7. Awarding Plaintiff interest, including pre-judgment interest, on the foregoing sums;

8. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from:

(a) directly or indirectly infringing Plaintiff's copyright or marketing, offering, selling, disposing of, licensing, leasing, transferring, publicly displaying, advertising, reproducing, developing or manufacturing any works derived or copied from the Plaintiff's Copyrighted Work or participating or assisting in any such activity; and

(b) directly or indirectly removing or altering any copyright management information from, or providing or distributing any false copyright management information in connection with, Plaintiff's Copyrighted Work.

9. For such other and further relief as the Court may deem just and proper.

DUANE MORRIS LLP

Dated: September 7, 2016

By: */s/ Christopher B. Yeh*
Christopher B. Yeh
Attorneys for Plaintiff John Durant

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38.

DUANE MORRIS LLP

Dated: September 7, 2016

By: */s/ Christopher B. Yeh*
Christopher B. Yeh
Attorneys for Plaintiff John Durant